



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201309020

DEC 07 2012

Uniform Issue List: 72.20-04

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Legend:

Taxpayer A =

IRA B =

Custodian C =

Amount 1 =

Amount 2 =

Dear :

This is in response to a letter dated May 11, 2012, submitted on your behalf by your authorized representative, requesting a ruling that the failure to make a distribution from your IRA in 2011 and a subsequent "make-up" distribution in 2012 will not result in a modification to the series of substantially equal periodic payments being made under section 72(t)(2)(A)(iv) of the Internal Revenue Code ("Code") and will not be subject to the 10% additional tax imposed on early distributions under section 72(t)(1) of the Code.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A owns IRA B. In 2004 Taxpayer A established an arrangement with Custodian C, the custodian holding IRA B, under which Taxpayer A would receive annual IRA B distributions in Amount 1, which was calculated using the fixed amortization method described in Notice 89-25, 1989-1 C.B. 662. The annual payments were intended to be a series of substantially equal periodic payments as described in section 72(t)(2)(A)(iv) of the Code. Based on these factors, from 2004 through 2011 Taxpayer A received annual IRA B distributions in Amount 1.

Custodian C assigned responsibility for making Taxpayer A's annual payments to one of its employees. From 20 through 20, this employee sent Taxpayer A her annual distributions without requiring any application or communication from Taxpayer A. However, in 20, this Custodian C employee retired prior to making an annual distribution to Taxpayer A. The Custodian C employee also neglected to transfer her responsibility for making the annual payments to Taxpayer A to another Custodian C employee. As a result Custodian C erroneously failed to make an annual payment to Taxpayer A in 20.

Taxpayer A was unaware that the Custodian C employee had retired and that Amount 1 had not been distributed for year 20 until she received her 1099-R from Custodian C in 20. Taxpayer A immediately contacted Custodian C, and Custodian C issued a letter dated March, 20, acknowledging that the administrative error resulted in the failure of Custodian C to make a payment of Amount 1 to Taxpayer A in calendar year 20. Taxpayer A took a distribution in 20 of Amount 1 as a "make-up" distribution for the missed distribution from 20.

Based on the foregoing, Taxpayer A requests a ruling that the failure to distribute the annual payment amount for the calendar year 20 and the make-up payment made in calendar year 20 will not modify the series of substantially equal periodic payments determined under section 72(t)(2)(A)(iv) of the Code and therefore will not result in the imposition of the % early distribution tax under section 72(t)(1) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 72 of the Code provides rules for determining how amounts received as annuities, endowments, or life insurance contracts and distributions from qualified plans are to be taxed.

Section 72(t)(1) of the Code provides for the imposition of an additional 10% tax on early distributions from qualified plans, including IRAs. The additional tax is imposed on that portion of the distribution that is includible in gross income.

Section 72(t)(2)(A)(iv) of the Code provides that section 72(t)(1) of the Code shall not apply to distributions that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or joint lives (or joint life expectancies) of such employee and her designated beneficiary.

Section 72(t)(4) of the Code imposes the additional limitation on distributions excepted from the 10% tax by section 72(t)(2)(A)(iv) of the Code that, if the series of payments is subsequently modified (other than by reason of death or disability) before the

employee's attainment of age 59½, then the taxpayer's tax for the first taxable year in which such modification occurs shall be increased by an amount determined under regulations, equal to the tax that would have been imposed except for the section 72(t)(2)(A)(iv) of the Code exception, plus interest for the deferral period.

Notice 89-25 was published on March 20, 1989, and provided guidance, in the form of questions and answers, on certain provisions of the Tax Reform Act of 1986 ("TRA '86"). In absence of regulations on section 72(t) of the Code, this notice provides guidance with respect to the exception to the tax on early distributions provided under section 72(t)(2)(A)(iv) of the Code. Q&A-12 of Notice 89-25 provides three methods of determining substantially equal periodic payments for purposes of section 72(t)(2)(A)(iv) of the Code.

Revenue Ruling 2002-62, 2002-2 C.B. 710, modified Q&A-12 of Notice 89-25 and provides, among other things, that payments are considered to be substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) of the Code if they are made in accordance with the required minimum distribution method, the fixed amortization method or the fixed annuitization method (the three methods described in Q&A-12 of Notice 89-25).

Section 2.02(e) of Rev. Rul. 2002-62 provides in part, that under all three methods, substantially equal periodic payments are calculated with respect to an account balance as of the first applicable valuation date. Thus, a modification to the series of payments will occur if, after such date, there is (i) any addition to the account balance other than gains or losses, (ii) any nontaxable transfer of a portion of the account balance to another retirement plan, or (iii) a rollover by the taxpayer of the amount received resulting in such amount not being taxable.

Taxpayer A represents that Custodian C failed to make the scheduled annual payment as established under their arrangement, which caused Taxpayer A to not receive a distribution from IRA B for distribution year 2011. Custodian C provided a letter acknowledging the administrative error that caused the failure to make the payment to Taxpayer A. Taxpayer A received a make-up payment of Amount 1 in 2012 that would satisfy her annual payment distribution requirement for 2011, as determined under the fixed amortization method. When this amount is added to the regular annual payment for 2012, Taxpayer A will receive two payments of Amount 1 for a total of Amount 2. Taxpayer A represents that she did not intend to modify the series of substantially equal periodic payments, however, and that other than this make-up payment, Taxpayer A will continue to use the fixed amortization method for calculating her annual payments from IRA B.

Based on the foregoing, we conclude that the failure to make the annual payment from IRA B in 2011 and a subsequent make-up payment in 2012 will not modify the series of substantially equal periodic payments under section 72(t)(2)(A)(iv) of the Code, and the make-up payment will not be subject to the 10% tax under on early distributions under section 72(t)(1) of the Code.

This ruling assumes that IRA B is an IRA within the meaning of section 408 of the Code at all relevant times.

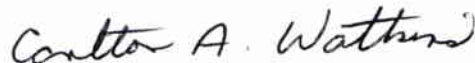
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact (ID Badge Number
) at () - . Please address all correspondence to SE: T: EP:
RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

cc: